

REMARKS/ARGUMENTS

1.) Allowable Subject Matter

The Applicant gratefully acknowledges the allowance of claim 15.

2.) Claim Rejections – 35 U.S.C. § 103(a)

The Examiner rejected claims 10 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Valentine, et al. (US 6,088,589) in view of Helferich (US 6,233,430).

Under 35 U.S.C. § 103(c), Valentine no longer qualifies as prior art because it was commonly owned at the time the invention was made (and still is). More specifically, MPEP 706.02(l)(1) states:

Effective November 29, 1999, subject matter which was prior art under former 35 U.S.C. 103 via 35 U.S.C. 102(e) is now disqualified as prior art against the claimed invention if that subject matter and the claimed invention "were at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." This change to 35 U.S.C. 103(c) applies to all utility, design, and plant patent applications filed on or after November 29, 1999, including continuing applications filed under 37 CFR 1.53(b), continued prosecution applications filed under 37 CFR 1.53(d), and reissues.

MPEP 706.02(l)(1) further states:

The mere filing of a continuing application on or after November 29, 1999 will serve to exclude commonly owned 35 U.S.C. 102(e) prior art that was applied, or could have been applied, in a rejection under 35 U.S.C. 103 in the parent application.

The instant application was originally filed on May 1, 2001 with a priority date of July 15, 1998. Applicant respectfully notes that the instant application as well as Valentine were, at the time the invention was made, owned by the same entity – Telefonaktiebolaget LM Ericsson (publ). Valentine was and is owned by Ericsson Inc. which is an indirect wholly-owned subsidiary of Telefonaktiebolaget LM Ericsson (publ).

The ownership information is indicated on the face of Valentine, and is shown for the instant application in an assignment recorded on May 1, 2001, and recorded with the U.S. Patent and Trademark Office at reel 011760, frame 0592.

As a result, all of the requirements of 35 U.S.C. 103(c) have been met, and Valentine is disqualified as prior art references in the instant application. None of the secondary references cited by the Examiner teach or suggest the claimed invention. Therefore, Applicant respectfully requests the withdrawal of the rejection and the issuance of a Notice of Allowance for all pending claims.

CONCLUSION

In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for all pending claims.

The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,



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